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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of Allocation of)
Spectrum Below 5 GHz Transferred)
from Federal Government Use)

ET Docket No. 94-32

PETITION FOR CLARIFICATION AND RECONSIDERATION
OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

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**FEDERAL COMMUNICATIONS COMMISSION
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**PETITION FOR CLARIFICATION AND RECONSIDERATION
OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.**

On April 6, 1995, the Association for Maximum Service Television, Inc. ("MSTV") and other broadcasting organizations urged the Commission to reconsider its allocation decision ("Reconsideration Petition", attached hereto as Exhibit A) with respect to the 4660-4685 MHz band, as set forth in the First Report and Order.^{1/} On August 2, 1995, the Commission issued its Second Report and Order in this docket, building on decisions made in the First R & O and settling some questions raised by the Second Notice.^{2/} It did so apparently without disposing of the Reconsideration Petition. We now request clarification of the status of the Reconsideration Petition and, in addition, urge the Commission to consider that petition as one for reconsideration of the Second R & O which shares the errors of the First R & O.

^{2/} See Second Report and Order, ET Docket No. 94-32, August 2, 1995 ("Second R & O").

I. **REQUEST FOR CLARIFICATION.**

In May 1994, the Commission released a Notice of Inquiry in this docket, requesting comment on the potential uses of the 50 MHz of spectrum (2390-2400 MHz, 2402-2417 MHz, and 4660-4685 MHz) to be reallocated from government use.^{3/} The following November, it released a Notice of Proposed Rulemaking proposing a broad allocation of the entire 50 MHz of spectrum to fixed and mobile services.^{4/} Intense opposition to that proposal resulted in the Commission's decision in the First R & O to allocate the 25 MHz available in the 2 GHz band to specific services.^{5/}

However, with respect the 25 MHz available in the 4660-4685 MHz band, the Commission rejected the requests of MSTV^{6/} and others^{7/} to allocate the spectrum to specific

^{3/} In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 9 FCC Rcd 2175 (1994).

^{4/} In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 9 FCC Rcd 6779 (1994).

^{5/} See First R & O, at 4 and 5.

^{6/} See Comments of MSTV, ET Docket No. 94-32, June 13, 1995.

^{7/} See Comments of Alcatel Network Systems, ET Docket No. 94-32, at 3-4 (June 15, 1994) (microwave fixed links); Comments of the American Petroleum Industry, ET Docket No. 94-32, at 15 (June 15, 1994) (same); Comments of Loral/Qualcomm, ET Docket No. 94-32, at 6 (June 29, 1994) (MSS feeder links); Comments of Pacific Bell, ET Docket No. 94-32, at 5 (June 15, 1994) (TDD applications); Reply Comments of NABER, ET Docket No. 94-32, at 4 (June 30, 1994) (land mobile); Reply Comments of COMSAT, ET Docket No. 94-32, at 1-2 (June 30, 1994) (MSS feeder links).

services. Instead, the First R & O adopted a broad allocation for that spectrum for fixed and mobile services on the grounds that "the public will receive the greatest benefit by [such an allocation], regardless of whether the ultimate use of this spectrum is for private services, non-subscriber services, or subscriber-based services." First R & O, at 22.^{8/} The Second Notice proposed to name this broad allocation the "General Wireless Communication Service" ("GWCS") and requested comment on how the spectrum should be assigned to prospective licensees in this service class. Second Notice, at 30.

On March 21, 1995, MSTV and others submitted comments on the Second Notice ("Joint Comments"), urging that the 4660-4685 MHz band be allocated to broadcast auxiliary services ("BAS"), that service rules be crafted accordingly, and that the Commission halt and reverse the steps it had taken toward the creation of the GWCS.^{9/} The prime use of

^{8/} MSTV noted in the Reconsideration Petition that the Commission's decision with respect to this broad allocation, although part of the First R & O, appeared somewhat tentative. See Reconsideration Petition, at 3. Notwithstanding the fact that the decision had been taken, the Second Notice proceeded to request comment on "an alternative" approach that might "better [accommodate user] needs by prescribing rules that provide for utilization of the 4660-4685 MHz frequency band only by specific services." Second Notice, at 31.

^{9/} Joint Comments of MSTV and Other Major Television Broadcasting Entities, ET Docket No. 94-32, March 21, 1995. See also, Reply Comments of MSTV, ET Docket No. 94-32, April 4, 1995. The Joint Comments were filed by MSTV, the Association of America's Public Television Stations, Capital Cities/ABC, Inc.; CBS Inc.; the Fox Television Group of companies; the National Association of Broadcasters; the National Broadcasting Company, Inc.; the Public Broadcasting (continued...)

BAS spectrum is electronic news gathering ("ENG") which enables local broadcasters, and broadcast and cable networks to transmit live and special event coverage to virtually the entire public by relaying high quality signals from remote sites back to the studio for delivery. Though their transmissions are invisible to the public, ENG operations make it possible for even the smallest stations to cover breaking news and other events live by transmitting signals in real time back to their studios.

The Joint Comments emphasized that broadcasters currently overload the 2 GHz spectrum used to conduct ENG and ENG use is predicted to increase annually.^{10/} According to a recent survey, local stations are devoting more time and money to news coverage than ever before.^{11/} In addition, more local stations are launching newscasts for the first time. In the past four years, for example, the number of Fox affiliates airing prime time local newscasts has increased, more than 200%, from 15 to 50. The birth of three new networks (Fox,

^{9/} (...continued)

Service; and the Radio-Television News Directors Association. The Second R & O, at 6, 7, 9, and 16, refers to MSTV's positions but nowhere mentions that MSTV was joined in its comments by groups representing a large portion of the broadcast industry. Thus, MSTV's views, far from being idiosyncratic, largely represent those of a 40 billion dollar industry employing 10,000 people.

^{10/} See Comments of MSTV and Other Major Television Broadcasting Entities in ET Docket No. 94-32, ET Docket No. 95-18 and IC Docket No. 94-31.

^{11/} See "News Directors Face the Nation", Broadcasting and Cable, September 4, 1995, at 24-33.

UPN, and Warner Brothers) will continue to amplify past demands, just as the emergence of cable systems with local "news channels" and independent news gathering operations have already done. The danger is that ENG spectrum congestion, which will only grow more severe when advanced television is introduced, will impair the scope and quality of news coverage.^{12/}

Shortly after filing their Joint Comments, MSTV and others filed the Reconsideration Petition, urging the Commission to reconsider the First R & O' broad fixed and mobile allocation which was not supported by the record, sound public policy, or law. The Reconsideration Petition recommended instead that the Commission allocate the spectrum to particular services -- specifically to BAS. The Reconsideration Petition further posited legal flaws with the Commission's approach in allocating the 4 GHz band. That approach is inconsistent with the Commission's statutory obligations under the Communications Act,^{13/} the National

^{12/} For example, the most recent NTIA spectrum study found that the ENG bands "are already crowded and will become more so, mostly because of the need to simultaneously transport NTSC and HDTV signals and the increasing use of ENG for local news coverage." U.S. National Spectrum Requirements: Projections and Trends, March 1995, at 76-77. Previously conducted government studies have come to the same conclusion as have privately conducted ones. See, e.g., Hammett & Edison, Inc., 2 GHz Usage Survey, May 1995, at 1 (surveying ENG frequency coordinators, 100% of whom found the spectrum "congested," particularly during the most intensive news gathering times in the early morning, noon, late afternoon, and late evening hours).

^{13/} 47 U.S.C. § 303(a) - (c).

Telecommunications and Information Administration Organization Act,^{14/} and the Omnibus Budget Reconciliation Act.^{15/}

On July 14, 1995, MSTV and others filed a Petition for Consolidation ("Consolidation Petition") of this proceeding with others dealing with spectrum used for BAS.^{16/} With respect to the 25 MHz of spectrum at issue in this proceeding, the petition exhorted the Commission to forswear rushing this proceeding toward an early August deadline and instead to reach an understanding with Congressional leaders about how the spectrum should be used, since this is probably the only spectrum suitable for converting the public's ENG services to digital advanced television. Alternatively, it urged the Commission to delay implementing any disposition of this spectrum until it had completed a thoroughgoing survey of broadcast auxiliary and competing service needs.^{17/} The Commission has not yet addressed the Consolidation Petition, although parts of it may have survived subsequent events.

The Second R & O proceeded to adopt the GWCS designation and an auction methodology for assigning the 4660-4685 MHz band.^{18/} However, the Second R & O did not mention

^{14/} 47 U.S.C. § 925(a).

^{15/} 47 U.S.C. § 309(j).

^{16/} Petition for Consolidation of Interrelated Proceedings and Other Procedural Relief, ET Docket No. 94-32, ET Docket No. 95-18, and IC Docket No. 94-31, July 14, 1995.

^{17/} See Id. at 2.

^{18/} See Second R & O at 9-10, 19.

the Reconsideration Petition, even though the issues complained of in the Reconsideration Petition (i.e., the decision to allocate the 4660-4685 GHz band broadly to fixed and mobile services) formed the predicate for the decisions of the Second R & O.^{19/} As a result, it is unclear whether the Commission meant to deny the Reconsideration Petition sub rosa or whether that petition is still considered pending. MSTV requests clarification of this matter so that it may pursue judicial relief, if appropriate, as soon as possible.

II. REQUEST FOR RECONSIDERATION.

A. The GWCS assignment designation and auction approach lack record support and legal authority.

MSTV recognizes that the Commission may have deferred action on the Reconsideration Petition because the Second R & O served to refine and further develop the allocation decision that was made in the First R & O. MSTV takes this opportunity to reiterate the arguments made in the Reconsideration Petition which are equally applicable to the Second R & O's elaboration of the decision to allocate the 4660-4685 MHz band broadly to fixed and mobile services.

We will not recite here all the flaws with that allocation decision, which are set forth in the Reconsideration Petition. In short, the decision to broadly allocate the spectrum to fixed and mobile services and its

^{19/} The Second R & O did, however, address the questionable legality of the allocation decision. See Second R & O, at 10-12.

daughter designation of the GWCS for assignment by auction suffer from two basic infirmities. First, these decisions fail to fulfill the Commission's obligation to allocate spectrum to specific services with identifiable characteristics. See Reconsideration Petition, at 5-9. The Commission dismissed this complaint in both the First R & O and the Second R & O by stating that the Commission had made flexible allocations in the past and that the GWCS was "not so broad as to permit use of the 4660-4685 MHz band for any purpose."^{20/} However, as we stated in the Reconsideration Petition, the Commission has never made an allocation as vague and broad as this one and the very sparseness of the exclusions from the broad class serves to highlight just how uniquely broad is the allocation.^{21/}

Second, the assignment by auction of such a broad service "class" transforms the auction into an allocation tool, even though the Commission lacks the authority to use auctions in this way. See 47 U.S.C. § 309(j). The effective mutation of the auction from its role in distributing licenses

^{20/} First R & O, at 24; Second R & O, at 12.

^{21/} See Reconsideration Petition, at 7-9. The Reconsideration Petition made a number of other points with respect to the overbreadth of the allocation, including the fact that the First R & O failed to explain why, in broadly allocating the 4 GHz spectrum, it was departing from its past decisions and its decisions in the very same proceeding with respect to spectrum in the 2 GHz band. MSTV also argued that the record failed to support the conclusion that the broad allocation was in the public interest or that the public interest could be entirely divined by market forces.

within a service to allocating spectrum among various services happens this way: an artificially large service class groups together distinct and incompatible services, thereby subjecting all potential uses to auctions based on the characteristics of a few and excluding services simply because they are auction-exempt (i.e., not mutually-exclusive, not subscriber-based, and/or broadcast services) or technically incompatible. As a result, the service "class" comes to consist only of those auctionable, technically compatible services, absent a prior decision based on the record that the spectrum is best used for such services. See Reconsideration Petition, at 15-19. Alternatively, auction-exempt services are forced to participate in auctions contrary to the intent of Congress. See Id., at 23-25.

In this context, it is important to note that the Second R & O, like the First R & O, gives no indication that the Commission investigated the competing demands for the spectrum at issue and made a credible assessment of the best use. For over three years, the broadcast industry has submitted evidence of BAS' importance to the public and its need for additional spectrum.^{22/} Although the Second R & O

^{22/} See Joint Comments; Comments of MSTV to the Notice of Inquiry, ET Docket No. 94-32 (June 15, 1994); Comments of MSTV and Other Major Television Broadcasting Entities to the Notice of Proposed Rulemaking, ET Docket No. 94-32 (December 19, 1994). See also Comments of MSTV and Other Major Television Broadcasting Entities, IC Docket No. 94-31, at 5-12 (March 6, 1995); Comments of MSTV, IC Docket No. 94-31, at 3-7 (July 19, 1994); Reply Comments of MSTV, ET Docket 93-198, at 3-4 (July 1994). (continued...)

attributes to MSTV alone these positions, they have in fact been espoused by the broadcasting industry at large throughout the course of this proceeding. Other users of the 4 GHz band have submitted very little comparable evidence that their need for the spectrum is as urgent or as beneficial to the public.

Rather than weighing this evidence and crafting a service class based on the results, the Second R & O appears to favor the GWCS allocation because it "should permit a range of qualified uses, including those preferred by each of the commenters, while permitting new technologies and services to emerge and encouraging efficient use of this spectrum."

Second R & O, at 8. Although flexibility and inclusiveness may be desirable goals, the Communications Act does not authorize the Commission to pursue them in lieu of a careful distribution of spectrum among proposed uses, based on those uses' spectrum resources, needs, and contribution to the public. Furthermore, even if the Commission had taken stock of the competing spectrum needs in this proceeding, its conclusion that the GWCS permits coexistence among the proposed uses is simply incorrect. The decision in the Second R & O to reject a 6 MHz channelization plan, as proposed in

²²/ (...continued)

29, 1993); Reply Comments of MSTV, Gen. Docket No. 89-554, at 3-4 (Jan. 8, 1991); Comments of Capital Cities/ABC, Engineering Statement of Kenneth Brown, Gen. Docket No. 92-9 (June 4, 1992).

the Joint Comments,^{23/} in favor of a 5 MHz plan makes ENG operations in the 4 GHz band very unlikely because 5 MHz is simply not adequate to transmit distribution-quality video in a terrestrial environment. The prospect of interference with miscellaneous mobile and fixed services operating according to vastly different technical criteria also locks ENG operators out of the 4 GHz band.

B. The Commission should reconsider and suspend its 4 GHz allocation and assignment decisions pending the resolution of BAS spectrum issues in other fora.

In addition to the merits discussed above, the Commission should reconsider the Second R & O to ensure that the administrative process functions wisely and without waste. BAS and ENG in particular -- the services for which MSTV recommends the 4660-4685 MHz band be allocated -- are critical to the delivery of news and information via free over-the-air television. These services, presently operating on seven channels in the 2 GHz band, are overcrowded, too pinched to make the transition to digital television, and threatened with increased expenses, spectrum reductions, and spectrum relocations. Despite the importance of these services, their champions are fighting in three separate and uncoordinated administrative proceedings to ensure the services' continued

^{23/} Broadcast engineers are uncertain as to whether digital BAS will require a minimum of 6 MHz, 12 MHz, or 18 MHz channels, but believe that 6 MHz channels are the minimum broadcasters will need to support point-to-point distribution of ATV broadcasting on clear paths, even assuming the efficiencies of digital compression. See Joint Comments, at 20.

vigor.^{24/} Moreover, Congress is now considering legislation that would force ENG operations from much of the rest of the 2 GHz band. ^{25/}

Unfortunately, the deliberations in each of these fora have taken place in virtual isolation from each other. As a result, a party in one forum may recommend that ENG operations find a new home in the 4 GHz band while, in this forum, that possibility is foreclosed. This problem is particularly acute in discussions broadcasters are conducting with the MSS community where elimination of this option for the expansion and possible relocation of ENG make it extremely difficult, if not impossible, to resolve some of the issues and controversies in ET Docket No. 95-18. This would be particularly unfortunate if Congress requires ENG operations to move to the 4 GHz band and the Commission has to revisit the decisions of the Second R & O in any case.

The pressing and growing demands for ENG spectrum raise complex public policy and technical issues. That these

^{24/} In ET Docket No. 95-18, the Commission is considering reallocating 35 MHz (two channels) of the public's ENG spectrum to mobile satellite services ("MSS"). In IC Docket No. 94-31, the Commission is considering the international allocation of 20 of the 35 MHz and the implications of any divergence between domestic and international allocations for MSS. Presumably, the WRC-95 proceedings will resolve at least some of the issues in IC Docket No. 94-31 and throw light on the needs of MSS for additional spectrum.

^{25/} See S. 652, 104th Cong., 1st Sess. §701 (1995) ("the Commission shall allocate the 4635 - 4685 megahertz band . . . for broadcast auxiliary uses. . . [and] all licensees of broadcast auxiliary spectrum in the 2025-2075 megahertz band shall relocate into [this] spectrum").

issues are now fragmented in three FCC proceedings and Congress makes it difficult for the Commission to apply its expertise to determine the public interest based on a comprehensive and properly coordinated record. For that reason, the Commission should reconsider its allocation decisions in the First R & O and Second R & O. As stated in our Consolidation Petition, at 1-2, the FCC should also defer action on ET Docket No. 95-18, at least until the WRC-95 proceedings conclude in November and it is known what the international MSS allocation will be and the extent to which such an allocation overlaps, and thus makes viable, the MSS allocation proposed in ET Docket No. 95-18.

CONCLUSION

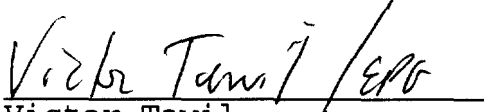
For the reasons stated herein, MSTV urges the Commission to clarify the status of the Reconsideration Petition and to treat that petition as a Petition for Reconsideration of both the Second R & O and the First R & O.

The Commission may wish to act separately on (i) the Reconsideration Petition and the portion of this pleading that urges clarification and reconsideration on the merits and (ii) the portion of this pleading that urges reconsideration for the sake of better administrative procedure. The former issues are essentially legal in nature, they have been pending for some time, and their resolution both here and ultimately

in court might set the appropriate stage for resolution of the policy issues which are largely at issue under (ii).

Respectfully submitted,

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FEDERAL BUREAU OF INVESTIGATION

ET Docket No. 94-32

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SUMMARY

MSTV and the Joint Commenters believe the Commission's allocation decision in the 4660-4685 MHz band is legally flawed in several respects and urge it to reconsider that allocation. By creating an unworkable and overbroad service class and proposing to auction off licenses within that class, the Commission has diverged sharply both from its past allocation methodology and from its allocation decisions in this very proceeding with respect to the two blocks of frequencies in the 2 GHz band. Specifically, the Commission has failed to discharge its spectrum allocation duty of determining which services will best use the spectrum and which are incompatible with such use. Moreover, the use of auctions in connection with an artificial aggregation of disparate services controverts the statutory mandate for assignment by auction and wrongly turns the auction methodology into an allocation tool. The Commission should change course by allocating the 4 GHz spectrum in the public interest for exclusive use by broadcast auxiliary operations. Such operations, harnessed to emerging advanced television technologies, will put the spectrum to its best use, foster new and enhance existing services, and further the goals of Congress in freeing this spectrum for private use.

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In the Matter of Allocation of)
Spectrum Below 5 GHz Transferred) ET Docket No. 94-32
from Federal Government Use)

The Association for Maximum Service Television, Inc. ("MSTV"), and the Association of America's Public Television Stations, Capital Cities/ABC, Inc.; CBS Inc.; the Fox Television Group of companies; the National Association of Broadcasters ("NAB"); National Broadcasting Company, Inc.; Public Broadcasting Service; and the Radio-Television News Directors Association ("RTNDA") (the "Joint Commenters") hereby urge the Commission to reconsider its allocation decision with respect to the 4660-4685 MHz band as set forth in the First Report and Order, ET Docket No. 94-32, released in the above captioned docket on February 17, 1995 (the "First R & O").^{1/}

1/ MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the local broadcast system. NAB is a non-profit, incorporated association of radio and television stations and networks which serves and represents the American broadcast industry. RTNDA is a non-profit trade association of local and network news executives and editorial personnel, educators, students, and others devoted to electronic journalism. The other Joint Commenters include major television broadcasting networks and affiliates' organizations. MSTV, NAB, RTNDA and the other Joint

(continued...)

INTRODUCTION

Pursuant to the Omnibus Budget Reconciliation Act of 1993 ("OBRA")², the Commission has undertaken to reallocate 200 megahertz of spectrum from federal government to non-federal government use. In February 1994, NTIA identified three frequency bands totalling 50 MHz of spectrum (2390-2400 MHz, 2402-2417 MHz, and 4660-4685 MHz) for immediate reallocation.³ In May 1994, the Commission released a Notice of Inquiry in this docket, requesting comment on the potential uses of the spectrum to be reallocated from government use.⁴ The following November, it released a Notice of Proposed Rulemaking ("NPRM") proposing a broad allocation of the entire 50 MHz of spectrum to fixed and mobile services.⁵ Intense opposition to that proposal resulted in the Commission's decision in the First R & O to

¹/ (...continued)

Commenters have a longstanding and vital interest in maintaining the viability of free, universal, over-the-air television broadcasting, and are deeply concerned about the need for continued uninterrupted access to sufficient auxiliary broadcast spectrum.

²/ Omnibus Budget Reconciliation Act of 1993, Pub.L.No. 103-66, 107 Stat. 312, August 10, 1993 (codified at 47 U.S.C. §§ 309(j) and 922 et seq).

³/ Preliminary Spectrum Reallocation Report, U.S. Department of Commerce, NTIA Special Publication 94-27, February 1994.

⁴/ In the Matter of Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, 9 FCC Rcd 2175 (1994) (NOI).

⁵/ In the Matter of Allocation of Spectrum Below 5 GHz Tranferred from Federal Government Use, 9 FCC Rcd 6779 (1994) (NPRM).

allocate the 25 MHz available in the 2 GHz band to specific services.^{1/}

With respect the 25 MHz available in the 4660-4685 MHz band, the Commission rejected the requests of MSTV^{2/} and others^{3/} to allocate the spectrum to specific services.

Instead, the First R & O adopted a broad allocation for fixed and mobile services on the grounds that "the public will receive the greatest benefit by [such an allocation], regardless of whether the ultimate use of this spectrum is for private services, non-subscriber services, or subscriber-based services." First R & O, at ¶ 41.^{2/} The Second Notice

^{1/} See First R & O, at ¶¶ 5 and 6. MSTV and the Joint Commenters have taken no position on the allocation of the frequencies in the 2 GHz band.

^{2/} See Comments of MSTV, ET Docket No. 94-32, June 13, 1995.

^{3/} See Comments of Alcatel Network Systems, ET Docket No. 94-32, at 3-4 (June 15, 1994) (microwave fixed links); Comments of the American Petroleum Industry, ET Docket No. 94-32, at 15 (June 15, 1994) (same); Comments of Loral/Qualcomm, ET Docket No. 94-32, at 6 (June 29, 1994) (MSS feeder links); Comments of Pacific Bell, ET Docket No. 94-32, at 5 (June 15, 1994) (TDD applications); Reply Comments of NABER, ET Docket No. 94-32, at 4 (June 30, 1994) (land mobile); Reply Comments of COMSAT, ET Docket No. 94-32, at 1-2 (June 30, 1994) (MSS feeder links).

^{2/} The Commission's decision with respect to this broad allocation appears somewhat tentative. In the Second Notice of Proposed Rule Making, released in the above captioned docket on February 17, 1995 ("Second Notice"), the Commission requested comment on "an alternative" allotment approach and "acknowledge[d] the possibility of better accommodating [user] needs by prescribing rules that provide for utilization of the 4660-4685 MHz frequency band only by specific services." Second Notice, at ¶ 62.

proposed to name this broad allocation the "General Wireless Communication Service" ("GWCS"). Second Notice, at ¶ 60.

The record is replete with evidence of why an exclusive allocation in the 4 GHz band to broadcast auxiliary operations ("BAS") would best serve the public interest. MSTV and the Joint Commenters in this proceeding^{10/} and elsewhere^{11/} have alerted the Commission to the existence of a severe shortage of existing spectrum available to support BAS. We also have demonstrated how this shortage is endangering the vital functions BAS supports such as news, sports, public affairs, and entertainment broadcasts. Finally we have explained that the successful introduction of digital television depends on an allocation of additional spectrum for BAS and that the 4 GHz spectrum is uniquely suited for BAS. In urging the Commission to reconsider its broad, non-specific allocation to fixed and mobile services, this petition for reconsideration incorporates by reference those arguments in

^{10/} See Comments of MSTV to the Notice of Inquiry, ET Docket No. 94-32 (June 15, 1994), Comments of MSTV and Other Major Television Broadcasting Entities to the NPRM, ET Docket No. 94-32, December 19, 1994, and Comments of MSTV and Other Major Television Broadcasting Entities to the Second Notice, ET Docket No. 94-32, March 21, 1995 ("Joint Comments II").

^{11/} See, e.g., Comments of MSTV, IC Docket No. 94-31, at 3-7 (July 19, 1994); Reply Comments of MSTV, ET Docket No. 94-31, at 1-3 (August 5, 1994); Comments filed in Amendment of the Commission Rules to Establish New Personal Communications Services, ET Docket No. 90-314; Comments filed in Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9.

favor of an exclusive allocation for BAS in the 4660-4685 MHz band.

Further, this petition urges modification of the Commission's approach in allocating the 4 GHz band because that approach is inconsistent with the Commission's statutory obligations under the Communications Act,^{12/} the National Telecommunications and Information Administration Organization Act,^{13/} and OBRA^{14/} insofar as it would create an over-broad service class, using auctions as an allocation tool, and either subjecting to competitive bidding services that Congress exempted from the Commission's auction authority or de facto precluding such services from enjoying the use of the band.^{15/}

**I. A General Allocation to Fixed and Mobile
Services in the 4 GHz Band is Unacceptably Broad.**

**A. The Commission must allocate spectrum to specific
services with identifiable characteristics.**

Congress has authorized the Commission to allocate radio spectrum "as public convenience, interest, or necessity requires." 47 U.S.C. § 303. Section 303 requires the Commission in allocating spectrum to "(a) [c]lassify radio stations; (b) [p]rescribe the nature of the service to be

^{12/} 47 U.S.C. § 303(a)-(c).

^{13/} 47 U.S.C. § 925(a).

^{14/} 47 U.S.C. § 309(j).

^{15/} These arguments were presented in part in the Joint Comments II, at 14-19 and Comments of MSTV and the Joint Commenters, ET Docket No. 94-32 (December 19, 1994), at 11-12.